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BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

KEITH & GENA HARDIN and CLARK
COUNTY,

Appellants,

v.

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondent.

SHB No. 91-53

DENIAL OF DOE'S MOTION FOR
SUMMARY JUDGMENT OF DISMISSAL

Oral argument on this Motion was heard by the Shorelines Hearings Board on January 15, 1992 at Lacey, WA. Present for the Board were Presiding Member Annette S. McGee, Chairman Harold S. Zimmerman, Nancy Burnett, and Robert Patrick with Administrative Law Judge John H. Buckwalter as legal counsel. Member David Wolfenbarger participated by telephone.

Appellants Hardin appeared through their attorney Richard Howsley. Deputy Prosecutor Richard Lowry represented Clark County, and Assistant Attorney General, Allen T. Miller, Jr., represented the Washington State Department of Ecology.

Court Reporter Betty J. Koharski, Gene Barker & Associates, Olympia, WA, recorded the proceedings.

Appellant Keith and Gena Hardin applied for and received a shoreline variance from Clark County on July 22, 1991, to construct a single family residence within the required shoreline setback of the

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(1)

1 Columbia River, located on Lot 28E in the NE 1/4 of Section 5, T. 1N.,
2 R. 2E., of the W.M., east of Vancouver, Washington.

3 The variance was denied by the DOE on August 7, 1991.

4 The Hardins appealed on September 5, 1991, and Clark County
5 entered its appearance as an appellant on September 13, 1991.

6 The DOE certified the appeal on September 18, 1991, and a
7 Pre-Hearing was held on October 28, 1991

8 On December 18, 1991, the DOE filed a Motion for Summary Judgment
9 of Dismissal. Ecology asked the Shorelines Hearings Board to
10 determine, as a matter of law, that the permit applicant's desire to
11 short plat their own residential property to create a second lot to
12 build on is the creation of their own hardship and a violation of WAC
13 173-14-150(2)(b) of the variance permit criteria.

14 The appellant filed a Memorandum in Opposition to the Motion on
15 January 6, 1992, and DOE's Reply was filed on January 13, 1992.

16 Having reviewed:

17 1. DOE's Motion for Summary Judgment and Dismissal, attached
18 Memorandum of Authorities in Support of its Motion, and attached
19 Affidavit of Jo Sohneronne with exhibit no. 1, appellant's Application
20 No. CC-219-90 for a Shoreline Variance Permit;

21 2. Appellant's Memorandum in Opposition to Motion for Summary
22 Judgment;

23 3. Affidavit of Richard Hines with attachments.

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1 4. Affidavit of Keith Hardin in Opposition to Motion for Summary
2 Judgment with attachments;

3 5. Department of Ecology's Reply Memorandum in support of its
4 Motion for Summary Judgment of Dismissal; and,

5 Having heard oral argument of all parties on January 15, 1992,

6 THE BOARD FINDING:

7 THAT the Department of Ecology's Motion asks the Board to dismiss
8 the appellants' appeal as a matter of law because

9
10 *...the Hardins' desire to short plat their own*
11 *current residential property in order to build*
12 *another residence within the 100-foot setback is the*
13 *creation of their own hardship, in violation of WAC*
14 *173-14-150(2)(b).*

15 Respondent DOE's Motion, page 4, CONCLUSION;

16 THAT there are no contested facts relative to this Motion;

17 THAT the Hardin's short-platting was required by Clark County
18 regulations;

19 THAT the division of their property lengthwise created no loss in
20 length of setback in either subdivision and that it is this physical
21 condition, not caused by appellants, which necessitated the request
22 for a variance permit, not a "desire to" shortplat;

23 THAT Wiswall v. Clark County, SHB No. 90-37, does not control in
24 this matter. There, appellants subdivided their property crosswise so
25 that the available setback space was reduced in size from what would

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1 have met regulatory requirements to a size which necessitated a
2 variance. Based on the facts of that case, the Board found that
3 appellants had created their own hardship by the manner in which they
4 subdivided their property. Here, the facts show no such reduction in
5 setback space because of subdividing;

6 THAT Oliver v. King County, SHB No. 80-26, is not relevant.
7 There, the denial of variance was based on appellant's failure to meet
8 a number of the criteria of WAC 173-14-150, not solely, if at all, on
9 the creation of his own hardship;

10 THAT respondent has not met its burden of proof that there are no
11 other material issues of fact which necessitate a hearing;

12 THAT, as a matter of law, appellants did not create their own
13 hardship by shortplatting as required by Clark County regulations;
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ORDER

NOW THEREFORE THE BOARD DENIES the Department of Ecology's Motion
for Summary Judgment of Dismissal.

DONE this 21st day of January, 1992.

SHORELINES HEARINGS BOARD

Annette S. McGee
ANNETTE S. MCGEE, Presiding

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Chairman

Nancy Burnett
NANCY BURNETT, Member

John H. Buckwalter
JOHN H. BUCKWALTER
Administrative Law Judge

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